

Appl. No. 10/820,590  
Docket No. 9031R  
Amdt. dated May 25, 2007  
Reply to Office Action mailed on January 25, 2007  
Customer No. 27752

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## REMARKS

### Claim Status

Claims 1-12 are pending in the present application. No additional claims fee is believed to be due.

Claim 1 has been amended.

Claim 4 has been previously cancelled without prejudice.

Claims 13-16 have previously been withdrawn as a result of an earlier restriction requirement.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

### Rejection Under 35 USC §103(a) Over U.S. Patent Application No. 2002/0187181 in view of U.S. Patent Application No. 2002/0187111.

Claims 1-12 are rejected under 35 USC §103(a) over U.S. Patent Application No. 2002/0187181 (hereinafter "Godbey") in view of U.S. Patent Application No. 2002/0187111 (hereinafter "Xu"). Applicants assert that Godbey in view of Xu does not teach all elements of Claim 1-12. Applicants assert that Godbey and Xu fails to disclose a tooth whitening product comprising a dose of tooth whitening agent per unit area of from about .001 mg/cm<sup>2</sup> to about 500 mg/cm<sup>2</sup> and additionally, Godbey fails to disclose a packaged tooth whitening product that has from about 10% to about 90% water.

Dosage of tooth whitening actives are not discussed in Godbey or Xu. Godbey and Xu only discuss amounts of active combined with other ingredients when making a product, not how much active is applied to any given area of the surface of the tooth. Therefore, Applicants assert that neither Godbey or Xu alone or in combination discloses each elements of the claimed invention.

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Applicants further assert that a disclosure in Godbey of a plasticizer added at 1-50%, does not necessarily translate into a packaged product comprising about 10% to about 90% water, as the carrier layer of the product is prepared by "dissolving at least one polymer and at least one plasticizer in water or other appropriate solvent. The solution thus prepared may be cast into a film, then dried." (Specification Page 3-4, Paragraph 0028) If the carrier layer is dried, then at least a portion of the water is removed; therefore a water level of about 10% to about 90% in a packaged product is not necessarily disclosed.

As stated in the Office Action Godbey does not teach mixtures and the molecular weight of polyethylene oxide. The Office Action cites Xu, stating "Xu teach(es) whitening strips comprising polyethylene oxide...the properties of the films are varied by varying film thickness and using a mixture of different molecular weight polyethylene oxide polymers (100,000 – 1,500,000 Daltons)." However, the Office Action recognizes that Xu does not teach a second polymer such as polyvinyl alcohol. The Office Action concludes that it would have been obvious to one of ordinary skill in the art to have used the polyethylene oxides of different molecular weights and mixtures in the compositions of the primary reference motivated by the desire to make an adhesive layer that provides a good balance of cohesive strength, water-solubility and the desired rate of release of the whitening agent, as disclosed by the secondary reference." Applicants assert that no motivation to modify the references in such a manner exists, and further that this is improper hindsight reconstruction. A general disclosure of molecular weights does not lead a person skilled in the art to choose a particular molecular weight of polyethylene oxide when combining with polyvinyl alcohol in a tooth whitening product. Further, Xu fails to disclose combining such a polyethylene oxide with a second polymer such as PVA. Therefore, Applicants assert that the invention as claimed would not have been obvious.

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Obvious-Type Double Patenting

Claims 1-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/936,756 (The Examiner actually refers to Application No. 10/820,590 in the 1/25/2007 Office Action. However, that is the number of this application. Applicant assumes the Examiner meant to make the same rejection as made in the 7/13/2006 Office Action. If this assumption is incorrect, please provide the application number the Examiner intended to cite.)

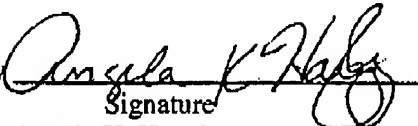
Applicants assert that the claim scope of the two applications is not the same, however, as stated in the previous response, in the interest of furthering prosecution Applicants are prepared to file a terminal disclaimer upon notice of allowable subject matter.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendment presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By   
Signature

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